IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1214 OF 2007

Ashok s/o Uttamrao Kakade ..Petitioner

Vs.

The State of Maharashtra and ors. ..Respondents

Mr. D.S. Chandnani i/by M/s. Lexim and Associates for petitioner.

Mr. S.R. Borulkar, P.P. for State.

CORAM: B.H. MARLAPALLE &
Smt.R.S. DALVI,JJ.

Reserved on : October 30, 2007.

Pronounced on : November 28, 2007.

P.C.:

1. Heard Mr. Chandnani the learned counsel for the petitioner, who is facing prosecution under the Prevention of Corruption Act, 1988 in Special Case No. 21 of 2005 and has been placed under suspension in the post of Police Inspector on that count.

2. The petitioner had filed Criminal Writ Petition No. 3147 of 2005 under Article 226 of the Constitution read with Section 482 of Cr.P.C. and prayed for setting aside the sanction order dated

14/11/2005, the charge-sheet dated 15/11/2005 and the statements recorded on 23rd and 25th June 2004 respectively at Exhs. D & E. The sanction order dated 14/11/2005 and charge-sheet dated 15/11/2005 were brought on record by the Assistant Commissioner of Anti Corruption Bureau, Mumbai along with his affidavit-in-reply in Criminal Application No. 6518 of 2005 and the sanction order was passed by the Commissioner of Police, Thane. By our order dated 31/1/2006 the petition was rejected summarily by noting that once the charge-sheet was filed before the Special Court, the merit of the allegations/ charges against the petitioner will have to be gone into by the said court. This order passed by us on 31/1/2006 came to be challenged by the petitioner in SLP (Cri) No. 6182 of 2006 and it was dismissed as withdrawn. The said order passed by the Apex Court on 10/7/2006 reads as under:-

". The matter was argued at length by the learned counsel for the petitioner. Later, the learned counsel seeks permission to withdraw the Special Leave Petition with liberty to move the High Court for filing a

review. Permission is granted. The Special Leave Petition is accordingly dismissed as withdrawn."

3. The petitioner, therefore, filed Criminal Application No. 283 of 2006 praying for review of the order dated 31/1/2006 passed in Writ Petition No. 3147 of 2005. The Review Application was mainly based on the contentions that it was respondent no.6 alone and not the respondent no.5 in Cri. Writ Petition No. 3147 of 2005 who was competent to pass the sanction order and respondent no.5 was not conferred with any powers to grant such sanction under Rule 5 of the Bombay Police (Punishment & Appeal) Rules 1956 framed under the Bombay Police Act, 1951. In reply, it was submitted by the respondents that for an officer in the rank of Police Inspector, the provisions of Section 19(1)(c) of the Prevention of Corruption Act, 1988 would be applicable and an officer who is the appointing authority or who is competent to dismiss the officer holding the post of Police Inspector, would be competent to pass the sanction order under Section 19(1)(c) of the Prevention of Corruption Act, 1988. It was further submitted that for the police

personnel upto the rank of Police Inspector, the Bombay Police (Punishment & Appeal) Rules, 1956 would be applicable. So far as the disciplinary proceedings against such officers are concerned and for the posts of Assistant Commissioner of Police/Deputy Superintendent of Police, the said Rules are not applicable. The respondent no.5 - Commissioner of Police, Thane in Cri. Writ Petition No. 3147 of 2005 had filed affidavit before us in the Review Petition and stated that while he was holding the post of Commissioner of Police, Nagpur City since May 2004 he was in the rank of Additional Director General of Police and on his transfer since 11/2/2005 as the Commissioner of Police, Thane City, he continued to be in the very same rank i.e. the Additional Director General of Police. He had further stated that under Section 19(1)(c) of the Prevention of Corruption Act, 1988 read with Article 311 of the Constitution of India the authority competent to dismiss or remove a member of the State police service is the authority competent to grant sanction under Section 19(1)(c) of the said Act and he was such a competent authority.

4. We noted that the petitioner was appointed by

way of promotion to the post of Police Inspector by the Additional Director General of Police and hence any officers of the rank of the Additional Director General of Police could accord sanction as required under Section 19(1)(c) of the Act and we also noted from the record produced before us that the Commissioner of Police, Thane City was of the rank of Special Inspector General of Police initially and the said post came to be upgraded to the rank of Additional Director General of Police vide the Government Resolution dated 18/2/1999. We also noted from the record that the petitioner was promoted to the post of Police Inspector vide the order dated 5/12/1999 passed by the Additional Director General of Police. Consequently, the review petition was dismissed by our order dated 14/11/2006. This order came to be challenged by the petitioner in SLP (Cri) No. 969 of 2007 which came to be dismissed by the Apex Court on 2/3/2007.

5. It appears after SLP (Cri) No. 969 of 2007 was dismissed by the Apex Court on 2/3/2007, the petitioner's legal adviser submitted an application to the Secretary in the Department of General

Administration, Government of Maharashtra on 18/5/2007 seeking information under the Right to Information Act, 2005 and the information sought for was regarding the applicability of the G.R. dated 3/4/2000. It was more particularly enquired as to whether the said GR was applicable to all the employees of the State Government or whether the police officers like the petitioner were exempted from the said GR. By his letter dated 28/5/2007 the Under Secretary in the Department of General Administration, Govt. of Maharashtra replied under the Right to Information Act, 2005 and stated that the GR dated 3/4/2000 was issued under the orders and in the name of the Governor of Maharashtra and it was applicable to all the departments of the State Government and no department of the State Government was exempted from its applicability. This fresh petition in the third round is, therefore, based on this reply dated 28/5/2007 and it is the contention of the petitioner that if the GR dated 3/4/2000 is applicable to him, the sanction order passed by respondent no.5 on 14/11/2005 is illegal. He, therefore, prays for a declaration that the Commissioner of Police, Thane was not competent to grant sanction under Section 19(1)(c)

of the Prevention of Corruption Act, 1988 and the order dated 14/11/2005 is illegal. He has further prayed for a declaration that the Commissioner of Police, Thane had committed criminal contempt as well as offences under Sections 191, 192 and 217 of IPC and that he be prosecuted along with all other persons who had aided, abetted, assisted him in that regard so as to uphold the majesty of judicial system.

6. The Under Secretary in the Department of General Administration, Government of Maharashtra and who had addressed the letter dated 28/5/2007 to the petitioner's legal adviser has filed an affidavit-in-reply and stated that so far as the police department is concerned, for administrative and disciplinary matters, the police officers are governed under the provisions of the Bombay Police Act, 1951 and, therefore, the officers upto the rank of Police Inspectors are governed by the Bombay Police (Punishment & Appeal) Rules 1956 framed by the Government of Maharashtra uder the Bombay Police Act, 1951, whereas all other Government servants are governed by the Maharashtra Civil Services (Discipline & Appeal) Rules 1979. As per the said affidavit, the

authorities competent to remove the police officers upto the rank of Police Inspectors have been defined under Section 25 of the Bombay Police Act, 1951 and, therefore, so far as the police officers upto the rank of Police Inspectors are concerned, they are governed by the provisions of Bombay Police (Punishment & Appeal) Rules, 1956. Consequently, as per the affiant the GR dated 3/4/2000 will not be applicable in the case of the petitioner. On receipt of a copy of this affidavit-in-reply, the petitioner filed an appeal under Section 18 of the Right to Information Act before the Information Commission and had prayed before us for adjournment of this petition till the said appeal is decided. When this prayer was turned down, the Advocate for the petitioner had prayed for a short adjournment to prepare himself to argue the petition and the prayer was granted but in the intervening period, the petitioner moved an application before the Hon'ble the Chief Justice of this Court for transfer of this petition to some other Division Bench. This transfer application has been dismissed by the Hon'ble the Chief Justice on 29/10/2007.

7. As noted earlier, this fresh petition is based only on the reply dated 28/5/2007 received from the Under Secretary in the Department of General Administration, Government of Maharashtra by the Advocate of the petitioner and it is contended that if the said GR is applicable to the petitioner, the sanction order passed by the Commissioner of Police, Thane is per se illegal and void ab initio. While deciding Cri. Writ Petition No. 3147 of 2005 as well as the Review Petition registered as Criminal Application No. 283 of 2006, we had considered the provisions of the Bombay Police Act, 1951 as well as the Rule 5 of the Bombay Police (Punishment & Appeal) Rules, 1956 and held that the sanction order passed by the Commissioner of Police did not suffer from any infirmities and the said order was passed under Section 19(1)(c) of the Prevention of Corruption Act, 1988. At this stage, the petitioner's learned counsel in his oral arguments raised an additional ground and stated that the petitioner was not holding the post of Police Inspector but he was holding the post of Senior Police Inspector at the relevant time and, therefore, he could not be governed by the Bombay Police (Punishment & Appeal) Rules, 1956. The learned

counsel specifically stated that the petitioner was promoted to the post of Sr.Police Inspector by an order passed by the competent authority and an entry to this effect was effected in his service book. The learned Public Prosecutor, on instructions, clearly stated before us that the post of Sr.Police Inspector is not a promotee post and the Senior most Police Inspector at a particular police station is called as Sr.Police Inspector for administrative reasons. We called upon the learned counsel for the petitioner to submit a copy of the promotion order or the service book. The service book has been produced before us and we have noted that there is no such entry regarding the promotion of the petitioner to the post of Senior Police Inspector. The petitioner could not produce a copy of the promotion order as well.

8. In the affidavit in reply by the Under Secretary, it has been clearly stated that in view of the provisions of the Bombay Police (Punishment & Appeal) Rules, 1956, the GR dated 3/4/2000 is not applicable to the police officers upto the rank of Police Inspectors and we have no doubt in our mind that the petitioner was holding the substantive post

of Police Inspector and he was not promoted to the post of Senior Police Inspector. As has been held by us in the earlier round of proceedings at the instance of the petitioner, the Commissioner of Police, Thane being the appointing as well as dismissing authority in respect of the police officers upto the rank of Police Inspector, he was competent to pass the impugned sanction order under Section 19(1)(c) of the Prevention of Corruption Act, 1988. The applicability of the Bombay Police (Punishment & Appeal) Rules, 1956 or the GR dated 3/4/2000 is not an issue which could be adjudicated on the basis of the letter dated 28/5/2007 received from the Under Secretary. Even the Information Commissioner while entertaining the appeal purportedly filed by the petitioner does not have such powers under the Right to Information Act, 2005. We are, therefore, satisfied that the petition has been moved on totally frivolous grounds and it deserves to be turned down at the threshold.

9. Hence, the petition is rejected summarily.

(Smt.R.S. Dalvi,J.) **(B.H. Marlapalle,J.)**